

Edward McCain

Mon, Jan 29, 2007 11:40 AM

Subject: Re: Urgent Danica photo
Date: Friday, January 21, 2005 11:24 AM
From: Mark Borchetta <mark@borchetta.com>
To: Edward McCain <edward@mccainphoto.com>
Cc: Brian Girecky <brian@borchetta.com>
Conversation: Urgent Danica photo

Brian, please advise Ed on whom to bill at Argent and what address.

--
Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

From: Edward McCain <edward@mccainphoto.com>
Date: Fri, 21 Jan 2005 11:15:47 -0700
To: Mark Borchetta <mark@borchetta.com>
Subject: Re: Urgent Danica photo

Mark,

Okay, DP solo 13. Can I get a name and address to send the invoice to at Argent?

Thanks,

Edward

On 1/21/05 11:10 AM, "Mark Borchetta" <mark@borchetta.com> wrote:

Yeah, it's "DP solo 13."

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

From: Edward McCain <edward@mccainphoto.com>
Date: Fri, 21 Jan 2005 10:46:54 -0700
To: Mark Borchetta <mark@borchetta.com>
Subject: Re: Urgent Danica photo

Mark,

Is there any image number or other way to identify the photo they are going to use?

I can invoice them for the full \$6500 and then pay you the difference between that and the \$5970 for my fee. Can you give me the name and address at Argent to invoice on this?

I will include the option for Argent to purchase future images at \$500 each for Business to business use for one year.

Thanks,

Edward

On 1/20/05 10:14 PM, "Mark Borchetta" <mark@borchetta.com> wrote:

Sorry for the delay Ed.

\$6,500 for the use of one image for one insertion in SI and Maxim, same image unlimited B-to-B use for one year. Payment in full due now. Either we can invoice them and forward to you, or, preferably, you can invoice them and pay me. But either way.

Agreement also allows purchase of future images at \$500 each for unlimited B-to-B use for one year.

Let me know if you have questions.

Edward McCain
Assignment & Stock Photography
Voice: (520) 623-1998 Fax: (520) 623-1190
mailto:edward@mccainphoto.com
Assignments:
<http://www.mccainphoto.com>
Stock:
<http://www.photosofarizona.com>
"Life is an affirmative action program"

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Edward McCain

Mon, Jan 29, 2007 11:40 AM

Subject: Invoicing

Date: Friday, January 21, 2005 3:29 PM

From: Brian Girecky <brian@borchetta.com>

To: <edward@mccainphoto.com>

Conversation: Invoicing

Ed,

Make your invoice out to Argent Mortgage an forward to:

Rochelle Arther
Advertising Coordinator, Marketing
Argent Mortgage
3 Park Plaza
Irvine, CA 92614
(800) 561-4072 Ext. 84175
Fax (800) 551-2614

Let me know if you encounter any problems.

Thanks,

Brian

Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

Edward McCain

Mon, Jan 29, 2007 11:44 AM

Subject: Invoicing

Date: Monday, January 24, 2005 10:03 AM

From: Brian Girecky <brian@borchetta.com>

To: <edward@mccainphoto.com>

Conversation: Invoicing

Ed,

I just heard back from Rochelle. If you haven't sent the invoice yet, send it to:

Hope Margarit
3 Park Plaza
Irvine, CA 92614

Instead of:

Rochelle Arther
Advertising Coordinator, Marketing
Argent Mortgage
3 Park Plaza
Irvine, CA 92614
(800) 561-4072 Ext. 84175
Fax (800) 551-2614

If you have already sent it, there shouldn't be a problem, but let me know if you do encounter any problems.

Thanks,

Brian

Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

Edward McCain

Mon, Jan 29, 2007 11:44 AM

Subject: Re: Invoicing

Date: Monday, January 24, 2005 10:45 AM

From: Brian Girecky <brian@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Invoicing

I don't anticipate that it will be a problem....

I'll email Rochelle and let her know that you sent it to her.

On 1/24/05 9:43 AM, "Edward McCain" <edward@mccainphoto.com> wrote:

> Brian,

>

> I already sent it to Rochelle. Perhaps she can forward it to Hope. If I need
> to re-send the invoice to Hope, let me know.

>

> Edward

>

> On 1/24/05 10:03 AM, "Brian Girecky" <brian@borchetta.com> wrote:

>

>> Ed,

>>

>>

>> I just heard back from Rochelle. If you haven't sent the invoice yet, send
>> it to:

>>

>>

>> Hope Margarit

>> 3 Park Plaza

>> Irvine, CA 92614

>>

>>

>> Instead of:

>>

>> Rochelle Arther

>> Advertising Coordinator, Marketing

>> Argent Mortgage

>> 3 Park Plaza

>> Irvine, CA 92614

>> (800) 561-4072 Ext. 84175

>> Fax (800) 551-2614

>>

>>

>>

>> If you have already sent it, there shouldn't be a problem, but let me know
>> if you do encounter any problems.

>>

>>

>> Thanks,

>>

>> Brian

>>

>> Production Coordinator

>> The Creative Department

>> Borchetta Marketing Group

>> 15260 Ventura Blvd.

>> Suite 840

>> Sherman Oaks, CA 91403
>> F 818.990.3239
>> F 818.990.6079
>> E Brian@borchetta.com

>>

>>

>

> *****

> Edward McCain

> Assignment & Stock Photography

> Voice: (520) 623-1998 Fax: (520) 623-1190

> mailto:edward@mccainphoto.com

> Assignments:

> http://www.mccainphoto.com

> Stock:

> http:www.photosofarizona.com

> "Life is an affirmative action program"

> *****

>

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Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

Edward McCain

Mon, Jan 29, 2007 11:45 AM

Subject: Re: Invoicing

Date: Monday, January 24, 2005 10:56 AM

From: Brian Girecky <brian@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Invoicing

Ed,

Rochelle said her attention will be fine.

Brian

On 1/24/05 9:49 AM, "Edward McCain" <edward@mccainphoto.com> wrote:

> Brian,

>

> Okay, Thanks.

>

> Edward

>

> On 1/24/05 10:45 AM, "Brian Girecky" <brian@borchetta.com> wrote:

>

>> I don't anticipate that it will be a problem....

>>

>> I'll email Rochelle and let her know that you sent it to her.

>>

>> On 1/24/05 9:43 AM, "Edward McCain" <edward@mccainphoto.com> wrote:

>>

>>> Brian,

>>>

>>> I already sent it to Rochelle. Perhaps she can forward it to Hope. If I need
>>> to re-send the invoice to Hope, let me know.

>>>

>>> Edward

>>>

>>> On 1/24/05 10:03 AM, "Brian Girecky" <brian@borchetta.com> wrote:

>>>

>>>> Ed,

>>>>

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>>>> I just heard back from Rochelle. If you haven't sent the invoice yet, send
>>>> it to:

>>>>

>>>>

>>>> Hope Margarit

>>>> 3 Park Plaza

>>>> Irvine, CA 92614

>>>>

>>>>

>>>> Instead of:

>>>>

>>>> Rochelle Arther

>>>> Advertising Coordinator, Marketing

>>>> Argent Mortgage

>>>> 3 Park Plaza

>>>> Irvine, CA 92614

>>>> (800) 561-4072 Ext. 84175

>>>> Fax (800) 551-2614

>>>>
>>>>
>>>>
>>>> If you have already sent it, there shouldn't be a problem, but let me know
>>>> if you do encounter any problems.
>>>>
>>>>
>>>> Thanks,
>>>>
>>>> Brian
>>>>
>>>> Production Coordinator
>>>> The Creative Department
>>>> Borchetta Marketing Group
>>>> 15260 Ventura Blvd.
>>>> Suite 840
>>>> Sherman Oaks, CA 91403
>>>> P 818.990.3239
>>>> F 818.990.6079
>>>> E Brian@borchetta.com
>>>>
>>>>
>>> *****
>>> Edward McCain
>>> Assignment & Stock Photography
>>> Voice: (520) 623-1998 Fax: (520) 623-1190
>>> mailto:edward@mccainphoto.com
>>> Assignments:
>>> http://www.mccainphoto.com
>>> Stock:
>>> http:www.photosofarizona.com
>>> "Life is an affirmative action program"
>>> *****
>>>
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>>>
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>> Production Coordinator
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Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

Edward McCain

Mon, Jan 29, 2007 11:45 AM

Subject: Re: Photo Library and Contract

Date: Wednesday, January 26, 2005 1:24 PM

From: Mark Borchetta <mark@borchetta.com>

To: <RARther@argementmortgage.com>, Brian Girecky <brian@borchetta.com>

Cc: <HMargarit@argementmortgage.com>

Conversation: Photo Library and Contract

Rochelle,

I'm presuming you haven't received the photographer's contract in the mail yet. I've attached an electronic version here.

As you can see, he is located in Tucson.

Brian, how many street clothes setups are there?

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

From: <RARther@argementmortgage.com>

Date: Wed, 26 Jan 2005 11:33:51 -0800

To: Brian Girecky <brian@borchetta.com>

Cc: <HMargarit@argementmortgage.com>, Mark Borchetta <mark@borchetta.com>

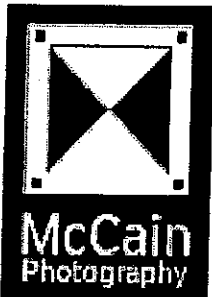
Subject: Re: Photo Library and Contract

Brian

Hope and I would actually like to meet with the photographer. Is he in the LA? If he is Hope and I would like to set up a time that we come up and have a brief meeting with him. In response to your comment about posting all of the photos we actually only want photos of Danica out of her gear and not near her car.

Thank you

Rochelle Arther
Advertising Coordinator, Marketing
Argent Mortgage
3 Park Plaza
Irvine, CA 92614
(800) 561-4072 Ext. 84175
Fax (800) 551-2614



Photography Invoice

TO: Rochelle Arther
Argent Mortgage Company LLC
3 Park Plaza
Irvine, CA 92614

(800) 581-4072

Date: 1/21/0
Invoice No.: 4343
Job N°: 2995
Client Job N°:
P.O. N°:
AD/Editor: M. Barc

Start Time: 3:30 PM

Start Date: 11/20/02

Due Date: 1/21/0

Details: Location photography of Danica Patrick Stock #DP solo 13.

Location: Firebird Raceway

Rights/Usages:

Print advertising usage of subject image "DP solo 13" as follows:

- One insertion in Sports Illustrated Magazine, up to one page in size, inside page position only.
- One insertion in Maxim Magazine, up to one page in size, inside page position only.

Subject photography © 2002 Edward McCain/McCain Photography. All rights are reserved except those specifically granted by this agreement.

Upon payment in full of this invoice, additional images from this photography session will be available to Arg Mortgage for Argent Mortgage Business-to-Business advertising usage for a period of one year for \$500 per image.

[illegible]

Payment is due upon receipt. Granting of right of usage is limited to that specified above and is contingent upon full payment and is subject to all terms and conditions

Itemized Costs: \$6

Exhibit H Page 133 Page 3 of 4

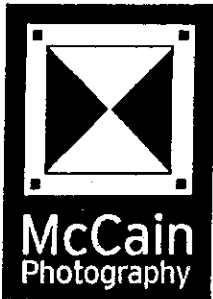
on the reverse side pursuant to article 2, Uniform Commercial Code and the 1976 Copyright Act. Unless otherwise agreed to in writing, the Photographer retains ownership of all photographs resulting from this assignment. Additional usage requires negotiation of additional fees.

Tax:
Total: \$6
Deposit/Credit:
Balance Due: \$6.

Page 1 of 1

EIN:88-08

McCain Photography, 211 S. Fourth Avenue, Tucson, AZ 85701-2103
(520) 623-1998 Fax: (520) 623-1190 edward@mccainphoto.com / www.mccainphoto.



Photography Invoice

TO: Rochelle Arther
Argent Mortgage Company LLC
3 Park Plaza
Irvine, CA 92614

(800) 561-4072

Date: 1/21/05
Invoice No.: 4343
Job N°: 2995
Client Job N°:
P.O. N°:
AD/Editor: M. Borchetta

Start Time: 3:30 PM

Start Date: 11/20/02

Due Date: 1/21/05

Details: Location photography of Danica Patrick Stock #DP solo 13.

Location: Firebird Raceway

Rights/Usages:

Print advertising usage of subject image "DP solo 13" as follows:

- One insertion in Sports Illustrated Magazine, up to one page in size, inside page position only
- One insertion in Maxim Magazine, up to one page in size, inside page position only.

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Upon payment in full of this invoice, additional images from this photography session will be available to Argent Mortgage for Argent Mortgage Business-to-Business advertising usage for a period of one year for \$500 per image.

[illegible]

Payment is due upon receipt. Granting of right of usage is limited to that specified above and is contingent upon full payment and is subject to all terms and conditions on the reverse side pursuant to article 2, Uniform Commercial Code and the 1976 Copyright Act. Unless otherwise agreed to in writing, the Photographer retains ownership of all photographs resulting from this assignment. Additional usage requires negotiation of additional fees.

Itemized Costs:	\$6,500.00
Tax:	\$0.00
Total:	\$6,500.00
Deposit/Credit:	\$0.00
Balance Due:	\$6,500.00

Edward McCain

Mon, Jan 29, 2007 11:48 AM

Subject: Re: Image posted

Date: Wednesday, January 26, 2005 2:05 PM

From: Mark Borchetta <mark@borchetta.com>

To: "Tuttle, Jennifer" <jtuttle@indyracing.com>

Cc: Edward McCain <edward@mccainphoto.com>

Conversation: Image posted

Hello Jennifer,

I wanted to introduce myself - I art directed the photo shoot from where that Danica image came. I also am responsible for bringing Argent into the world of racing. My ad agency handled all of their marketing at the time and I convinced them of all the great advantages of racing sponsorships - which obviously has paid off in spades! I have an extensive background in racing.

I am currently doing some pretty cool events at and around IRL races - I usually work with Kent Liffick and the speedways directly. Also my brother has provided a few performers for the Indy 500 over the past few years (he heads up Universal Music Group's country division).

Anyway, all that aside, when I saw your title, I wanted to introduce myself in case there ever seems to be an opportunity to work together.

Also, if you could, I would love to let my photographer know when and where the ad w/Danica will appear.

Thanks so much, take care.

--
Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

> From: "Tuttle, Jennifer" <jtuttle@indyracing.com>
> Date: Thu, 20 Jan 2005 08:54:13 -0500
> To: Mark Borchetta <mark@borchetta.com>, <HMargarit@argentmortgage.com>,
> <RArther@argentmortgage.com>
> Cc: "Haffner, Amos" <ahaffner@indyracing.com>, Brian Girecky
> <brian@borchetta.com>
> Subject: RE: Image posted
>
> Thanks everyone for all your efforts! This is an image we've been
> trying to get for 3 weeks now!
>
> Jennifer E. Tuttle
> Senior Manager, Strategic Alliances
> Indy Racing League
> 4565 West 16th Street
> Indianapolis, IN 46222

> 317.492.6557 direct
> 317.492.8730 fax
> 317.418.1875 cell
> jtuttle@indyracing.com
> www.indyracing.com/partnerships
>
>
> -----Original Message-----
> From: Mark Borchetta [mailto:mark@borchetta.com]
> Sent: Thursday, January 20, 2005 2:24 AM
> To: HMargarit@argementmortgage.com; RArther@argementmortgage.com
> Cc: Haffner, Amos; Tuttle, Jennifer; Brian Girecky
> Subject: Image posted
>
> The Danica image was posted about 9:30 pm. I downloaded it from the
> site to ensure there were no issues.
>
> Please contact asap if you so run into any problems.
>
>
> --
> Mark Borchetta
> Borchetta Marketing Group
> 15260 Ventura Blvd
> Suite 840
> Sherman Oaks, CA 91403
> Phone 818/990-3239
> Fax 818/990-6079
> mark@borchetta.com
>
>
>

Edward McCain

Mon, Jan 29, 2007 11:48 AM

Subject: Last email

Date: Wednesday, January 26, 2005 2:08 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Last email

Hey Ed,

I hadn't meant to cc you on that. It started out to be just a request for the ad issues, then I saw her title and added everything else and forgot to pull your name from the sendees...

See ya.

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

Edward McCain

Mon, Jan 29, 2007 11:49 AM

Subject: FW: Photographer Invoice

Date: Thursday, February 3, 2005 10:02 AM

From: Brian Girecky <brian@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Photographer Invoice

Ed,

Do you have the signed estimate/contract copy that they are looking for readily accessible? We can find ours, but we will have to pull it out of storage. If you can find yours easily please let me know. We are not sure why Argent does not have their copy.

Thanks,

Brian
Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

----- Forwarded Message

From: HMargarit@argentmortgage.com

Date: Wed, 2 Feb 2005 18:29:11 -0800

To: Brian Girecky <brian@borchetta.com>

Cc: RArther@argentmortgage.com

Subject: Re: Photographer Invoice

This is great, but I was looking for the contract or estimate we signed.

Thanks

Hope Margarit
Argent Mortgage
Marketing Manager, Advertising
P:800.561.4072 Ext.84249
C:714.504.8396
F:866.551.2614

Brian Girecky <brian@borchetta.com> 02/01/2005 09:28 AM

To: <HMargarit@argentmortgage.com>
cc:
Subject: Photographer Invoice

Hope,

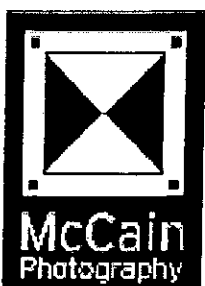
Here is an electronic version of the original contract. Let me know if this suits your needs.

Thanks,

Brian
Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

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----- End of Forwarded Message



Photography Invoice

TO: Mark Borchetta
Borchetta, Wertworth & Associates
26400 Emerald Dove Drive
Valencia, CA 91355
USA
(818) 990-3239

Date: 11/18/02
Invoice No.: 4172
Job No: 2995
Client Job No: AMC-02-07
P.O. No:
AD/Editor: Mark Borchetta

Start Time: 9:30 PM

Start Date: 11/20/02

Due Date: 11/18/02

Details: DANICA PATRICK RACER: • Location/studio still photography of driver Danica Patrick, full-length with CAH1 racer at sunset on F1 road track. NOTE: If CAH1 racer not available for studio we will photograph CART racer on track location, on small white streamers if weather and location permit. • Location still photography of driver Danica Patrick in various poses around track/pit area. • Location still photography of driver Danica Patrick in CART racer from over-the-shoulder perspective. • Location still photography of driver Danica Patrick in CART racer from various angles around track. • Location still photography of driver Danica Patrick in CART race

Location: F1 road track

Rights/Usages:

Exclusive usage of subject images for a period of one year as follows: • 1. Trade display advertisements for three monthly trade magazines and one bi-monthly magazine for a period of one year with circulation of all magazines totaling 100,000 or less. • 2. Business to Business direct-mail advertisement for a total of 12 insertions of postcard, one-page calendar sheets or key chain usage for a period of one year with a circulation of 20,000 or less per month. • 3. Trade show advertisements for a total of 6 trade shows a year, including pop-ups and trade show displays units for a period of one year.

Subject photography © 2002 Edward McCain/McCain Photography. All rights are reserved except those specifically granted by this agreement.

Itemized Photography Expenses	Qty:	Cost:	Ext. Co
2 Additional Usage Fee for media usage described above	1	\$1,000.	\$1,000
1 Photography Fee	1	\$2,000.	\$2,000
3 Photography First Assistant	2	\$200.00	\$400
4 Assistant's truck for grip pickup/return & canopy rental	1	\$125.00	\$125
5 Photography Second Assistant	1	\$200.00	\$200
6 Rental from Reel-Men Productions (20x20 silk & stands, etc.)	1	\$474.56	\$474
7 Minivan Rental	1	\$144.23	\$144
8 Rental equipment from PHOTOMARK	1	\$75.67	\$75
9 Superwhite background paper	1	\$208.36	\$208
10 Polapan PRO 100 B&W film (Type 664)	10	\$4.00	\$40
11 Professional color transparency film & processing	50	\$25.00	\$1,250
12 Stylist, hair & makeup	1	\$500.00	\$500
13 Meals & Lodging (see attached expense log for detail)	1	\$259.65	\$259

Payment is due upon receipt. Granting of right of usage is subject to that specified above and is contingent upon full payment and is subject to all terms and conditions on the reverse side pursuant to article 2, Uniform Commercial Code and the 1976

Itemized Costs: \$6,877

Tax: \$0

Exhibit H Page 41 Page 3 of 4

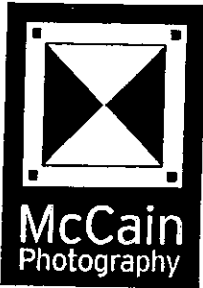
Copyright Act. Unless otherwise agreed to in writing, the Photographer retains ownership of all photography resulting from this assignment. Additional usage requires negotiation of additional fees.

Total: \$6,577
Deposit/Credit: \$3,000
Balance Due: \$3,677

Page 1 of 1

EIN:86-08004

McCain Photography, 211 S. Fourth Avenue, Tucson, AZ 85701-2103
(520) 623-1998 Fax: (520) 623-1190 edward@mccainphoto.com / www.mccainphoto.com



Photography Invoice

TO: Mark Borchetta
 Borchetta, Wentworth & Associates
 26403 Emerald Dove Drive
 Valencia, CA 91355
 USA
 (818) 990-3239

Date: 11/18/02
 Invoice No.: 4172
 Job N°: 2995
 Client Job N°: AMC-02-07
 P.O. N°:
 AD/Editor: Mark Borchetta

Start Time: 3:30 PM Start Date: 11/20/02 Due Date: 11/19/02

Details: DANICA PATRICK RACER: • Location/studio still photography of driver Danica Patrick, full-length with CART racer at sunset on Firebird track. NOTE: If CART racer not available for studio, we will photograph CART racer on track location, on small white seamless if weather and location permit. • Location still photography of driver Danica Patrick in various poses around track/pit area. • Location still photography of driver Danica Patrick in CART racer from over-the-shoulder perspective. • Location still photography of driver Danica Patrick in CART racer from various angles around track. • Location still photography of driver Danica Patrick in CART racer

Location: Firebird Raceway

Rights/Usages:

Exclusive usage of subject images for a period of one year as follows: • 1. Trade display advertisements for three monthly trade magazines and one bi-monthly magazine for a period of one year with circulation of all magazines totaling 100,000 or less. • 2. Business to Business direct-mail advertisement for a total of 12 insertions of postcard, one-page calendar sheets or key chain usage for a period of one year with a circulation of 20,000 or less per month. • 3. Trade show advertisements for a total of 6 trade shows a year, including pop-ups and trade show displays units for a period of one year.

Subject photography © 2002 Edward McCain/McCain Photography. All rights are reserved except those specifically granted by this agreement.

Itemized Photography Expenses		Qty:	Cost:	Ext. Cost:
2	Additional Usage Fee for media usage described above	1	\$1,000.	\$1,000.00
1	Photography Fee	1	\$2,000.	\$2,000.00
3	Photography First Assistant	2	\$200.00	\$400.00
4	Assistant's truck for grip pickup/return & canopy rental	1	\$125.00	\$125.00
5	Photography Second Assistant	1	\$200.00	\$200.00
6	Rental from Reel-Men Productions (20x20 silk & stands, etc.)	1	\$474.56	\$474.56
7	Minivan Rental	1	\$144.23	\$144.23
8	Rental equipment from PHOTOMARK	1	\$75.67	\$75.67
9	Superwhite background paper	1	\$208.36	\$208.36
10	Polapan PRO 100 B&W film (Type 664)	10	\$4.00	\$40.00
11	Professional color transparency film & processing	50	\$25.00	\$1,250.00
12	Stylist, hair & makeup	1	\$500.00	\$500.00
13	Meals & Lodging (see attached expense log for detail)	1	\$259.65	\$259.65

Payment is due upon receipt. Granting of right of usage is limited to that specified above and is contingent upon full payment and is subject to all terms and conditions on the reverse side pursuant to article 2, Uniform Commercial Code and the 1976 Copyright Act. Unless otherwise agreed to in writing, the Photographer retains ownership of all photographs resulting from this assignment. Additional usage requires negotiation of additional fees.

Itemized Costs: \$6,677.47
 Tax: \$0.00
 Total: \$6,677.47
 Deposit/Credit: \$3,000.00
 Balance Due: \$3,677.47

Page 1 of 1

EIN: 86-0800408

McCain Photography, 211 S. Fourth Avenue, Tucson, AZ 85701-2103
 (520) 623-1998 Fax: (520) 623-1190 edward@mccainphoto.com www.mccainphoto.com 143

Edward McCain

Mon, Jan 29, 2007 11:50 AM

Subject: Re: Photo Library and Contract

Date: Monday, February 7, 2005 2:13 PM

From: Brian Girecky <brian@borchetta.com>

To: <RArther@argentmortgage.com>, <HMargarit@argentmortgage.com>

Cc: Mark Borchetta <mark@borchetta.com>

Conversation: Photo Library and Contract

Rochelle,

We will be happy to have the images to you ASAP (By Friday) but we cannot have payment withheld contingent on that. Per Hope's email (attached) the budget for this image was approved. She did not want to wait for the other images as Mark offered to her at that time. The photographer will not agree to have payment withheld any longer. If we can not get a check issued by Wednesday, the photographer as advised us to have the image pulled (he was reticent on having the image released without payment in advance, but we told him that we have dealt with Argent in good faith for several years without a problem, and we did not anticipate a problem with this transaction).

Brian
Production Coordinator
The Creative Department
Borchetta Marketing Group
15260 Ventura Blvd.
Suite 840
Sherman Oaks, CA 91403
P 818.990.3239
F 818.990.6079
E Brian@borchetta.com

On 2/7/05 12:59 PM, "RArther@argentmortgage.com"
<RArther@argentmortgage.com> wrote:

Brian

Can you please scan one image of each of the eight setups and email over in a low res eps file? We will make a choice on what setups work best from there. I will need these ASAP.

Edward McCain

Mon, Jan 29, 2007 11:54 AM

Subject: Re: Edward McCain Nominated for Arizona Arts Award

Date: Monday, May 2, 2005 2:40 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Edward McCain Nominated for Arizona Arts Award

Sure. Take note of Danica this month.... She's going to be huge at Indy~

--

Mark Borchetta

From: Edward McCain <edward@mccainphoto.com>

Date: Mon, 02 May 2005 14:38:41 -0700

To: Mark Borchetta <mark@borchetta.com>

Subject: Re: Edward McCain Nominated for Arizona Arts Award

Thanks and best regards, Mark

On 5/2/05 8:10 AM, "Mark Borchetta" <mark@borchetta.com> wrote:

Good luck Ed!

Edward McCain

Assignment & Stock Photography

Voice: (520) 623-1998 Fax: (520) 623-1190

mailto:edward@mccainphoto.com

Assignments:

<http://www.mccainphoto.com>

Stock:

<http://www.photosofarizona.com>

"Life is an affirmative action program"

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Exhibit H Page 145 Page 1 of 2

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Edward McCain

Mon, Jan 29, 2007 11:55 AM

Subject: Re: Edward McCain Nominated for Arizona Arts Award

Date: Monday, May 2, 2005 4:08 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Edward McCain Nominated for Arizona Arts Award

Yeah, and she was second fastest qualifier and passed twice for the lead! I'm trying to land another deal for her, I'd love to have you shoot some more stuff if we get it. Those photos are sill the best she has!

From: Edward McCain <edward@mccainphoto.com>

Date: Mon, 02 May 2005 16:04:08 -0700

To: Mark Borchetta <mark@borchetta.com>

Subject: Re: Edward McCain Nominated for Arizona Arts Award

I see she took fourth in the Japan 300 - damn! I hope she kicks ass at Indy...

On 5/2/05 2:40 PM, "Mark Borchetta" <mark@borchetta.com> wrote:

Sure. Take note of Danica this month.... She's going to be huge at Indy~

Edward McCain

Assignment & Stock Photography

Voice: (520) 623-1998 Fax: (520) 623-1190

mailto:edward@mccainphoto.com

Assignments:

<http://www.mccainphoto.com>

Stock:

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Exhibit H Page 147 Page 1 of 2

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Edward McCain

Mon, Jan 29, 2007 11:56 AM

Subject: Re: Edward McCain Nominated for Arizona Arts Award

Date: Monday, May 2, 2005 4:21 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Edward McCain Nominated for Arizona Arts Award

Cool. Will hopefully be in touch.

--

From: Edward McCain <edward@mccainphoto.com>

Date: Mon, 02 May 2005 16:17:13 -0700

To: Mark Borchetta <mark@borchetta.com>

Subject: Re: Edward McCain Nominated for Arizona Arts Award

Mark,

You wouldn't have to twist my arm. Let me know how it goes and if you need any help putting together your proposal - you can use some of my photos if you need to. It would be such a blast to work with you again!

Thanks,

Edward

On 5/2/05 4:08 PM, "Mark Borchetta" <mark@borchetta.com> wrote:

Yeah, and she was second fastest qualifier and passed twice for the lead! I'm trying to land another deal for her, I'd love to have you shoot some more stuff if we get it. Those photos are sill the best she has!

Edward McCain

Assignment & Stock Photography

Voice: (520) 623-1998 Fax: (520) 623-1190

mailto:edward@mccainphoto.com

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Edward McCain

Mon, Jan 29, 2007 11:59 AM

Subject: Re: Danica Images

Date: Thursday, June 2, 2005 7:50 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Danica Images

They could've gotten several photos from Argent or us – but if from us, it would have been at the request of Argent for Rahal's approval for use in an Argent ad, as Rahal has approval on everything. Knowing Rahal's organization though, I would guess that they would have gotten the OK from Argent to use any photo. That's again only a guess.

Argent's contact would've been Johanna Padberg, who is no longer there. Hope, with whom I believe you spoke regarding the SI/Maxim deal, would probably be the person who communicates with Rahal Letterman Racing now. I'm not sure with whom she would communicate about PR stuff.

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd, Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
www.borchetta.com

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From: Edward McCain <edward@mccainphoto.com>

Date: Thu, 02 Jun 2005 15:26:55 -0700

To: Mark Borchetta <mark@borchetta.com>

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Edward McCain

Mon, Jan 29, 2007 12:02 PM

Subject: Re: Card Question

Date: Monday, June 13, 2005 5:43 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Card Question

I thought I had responded to this... The design style looks like something that would have been produced by Argent or one of their other agencies.

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd, Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
www.borchetta.com

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From: Edward McCain <edward@mccainphoto.com>

Date: Mon, 13 Jun 2005 08:57:40 -0700

To: Mark Borchetta <mark@borchetta.com>

Subject: Card Question

Mark,

Do you know who produced this card for Argent in 2003 (apparently)?

Hope you had a good weekend.

Edward

Edward McCain

Assignment & Stock Photography

Voice: (520) 623-1998 Fax: (520) 623-1190

mailto:edward@mccainphoto.com

Assignments:

<http://www.mccainphoto.com>

Stock:

<http://www.photosofarizona.com>

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To: <RArther@argentmortgage.com>
cc:
Subject: Re: Urgent Danica photo

Not that I possess.

--
Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

From: RArther@argentmortgage.com
Date: Wed, 19 Jan 2005 14:10:49 -0800
To: mark@borchetta.com, brian@borchetta.com
Cc: HMargarit@argentmortgage.com
Subject: Urgent Danica photo

Mark

Are there any similar photos of Danica that we don't have to pay licensing fees on that we own out right?

Thank you

Rochelle Arther
Advertising Coordinator, Marketing
Argent Mortgage
3 Park Plaza
Irvine, CA 92614
(800) 561-4072 Ext. 84175

From: Mark Borchetta <mark@borchetta.com>
Date: Wed, 19 Jan 2005 14:20:23 -0700
To: <RArther@argentmortgage.com>
Subject: Re: Urgent Danica photo

By the way, it is the photographer that owns the licensing, not BMG.

--
Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd
Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
Fax 818/990-6079
mark@borchetta.com

From: RArther@argentmortgage.com
Date: Wed, 19 Jan 2005 14:15:29 -0800
To: Mark Borchetta <mark@borchetta.com>
Subject: Re: Urgent Danica photo

We used the leather shots all throughout 2003 under Johanna's contract. So did we have to pay fees on those or did the contract just run out?

Thank you

Rochelle Arther
Advertising Coordinator, Marketing
Argent Mortgage
3 Park Plaza
Irvine, CA 92614
(800) 561-4072 Ext. 84175
Fax (800) 551-2614

Edward McCain

Mon, Jan 29, 2007 12:01 PM

Subject: Re: Danica

Date: Wednesday, June 8, 2005 2:10 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Danica

No, I did not do this piece. Looks like an Argent internal design. The agency that did their newsletter used that design style.

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd, Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
www.borchetta.com

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From: Edward McCain <edward@mccainphoto.com>

Date: Wed, 08 Jun 2005 13:17:45 -0700

To: Mark Borchetta <mark@borchetta.com>

Subject: Danica

Mark,

Exhibit H Page 156

Page 1 of 2

Was this piece one of the ones you did for Argent under our agreement?

The letters will go out by the end of the week. That's about all I know now.

Thanks,

Edward

Edward McCain

Assignment & Stock Photography

Voice: (520) 623-1998 Fax: (520) 623-1190

mailto:edward@mccainphoto.com

Assignments:

<http://www.mccainphoto.com>

Stock:

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Edward McCain

Mon, Jan 29, 2007 12:01 PM

Subject: Re: Danica

Date: Wednesday, June 8, 2005 3:01 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Danica

I couldn't say when it was created. The CDL (my company) created most everything for them, but not all. They had an agency in the mid-west who did a few things for them, such as their newsletter, etc. I would guess that card is a B2B hero card for a tradeshow or internal sales meeting, or something like that.

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd, Suite 840
Sherman Oaks, CA 91403
Phone 818/990-3239
www.borchetta.com

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From: Edward McCain <edward@mccainphoto.com>
Date: Wed, 08 Jun 2005 14:49:20 -0700
To: Mark Borchetta <mark@borchetta.com>
Subject: Re: Danica

Edward McCain

Mon, Jan 29, 2007 12:02 PM

Subject: Re: Danica

Date: Wednesday, June 8, 2005 3:02 PM

From: Mark Borchetta <mark@borchetta.com>

To: Edward McCain <edward@mccainphoto.com>

Conversation: Danica

The guy you got it from on Ebay (if that's where you got it) could be a broker selling something she signed for him at an Argent event.

Is that legal for a person to do?

--

Mark Borchetta
Borchetta Marketing Group
15260 Ventura Blvd, Suite 840
Sherman Oaks, CA 91403
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From: Edward McCain <edward@mccainphoto.com>
Date: Wed, 08 Jun 2005 14:49:20 -0700
To: Mark Borchetta <mark@borchetta.com>
Subject: Re: Danica

Does that mean they probably created the piece after the one-year agreement had expired? Did you do all this kind of work for them that year?

On 6/8/05 2:10 PM, "Mark Borchetta" <mark@borchetta.com> wrote:

No, I did not do this piece. Looks like an Argent internal design. The agency that did their newsletter used that design style.

Edward McCain

Assignment & Stock Photography

Voice: (520) 623-1998 Fax: (520) 623-1190

mailto:edward@mccainphoto.com

Assignments:

<http://www.mccainphoto.com>

Stock:

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Edward McCain

Mon, Jan 29, 2007 1:13 PM

Subject: Danica images usage

Date: Wednesday, August 16, 2006 11:56 AM

From: Mark Borchetta <mark@borchetta.com>

To: Ed McCain <edward@mccainphoto.com>

Cc: David Cohen <dcohen@linerlaw.com>, <jpelosi@pwes.com>

Conversation: Danica images usage

Category: Advertising/Design

Hi Ed,

I'm just emailing to confirm that we had previously spoken about The Creative Department dba Borchetta Marketing Group having permission to display the Danica Patrick images you shot in 2003 at Firebird Raceway for use on the borchetta.com website and to be able to show to potential clients as marketing materials for Borchetta Marketing Group.

The photos were not and are not to be used for any other purpose by Borchetta Marketing Group.

There was no charge for such and Borchetta Marketing agreed not to use the photos for any other purpose whatsoever.

Please make sure I was in correct understanding of our discussion.

Thanks.

--
Mark Borchetta

25020 Avenue Stanford
Suite 100
Valencia, CA
25020 Avenue Stanford, Suite 100
Valencia, CA 91355
Phone 661-977-7464
Fax 661-702-1844
www.borchetta.com

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Edward McCain

Mon, Jan 29, 2007 1:14 PM

Subject: Re: Danica images usage
Date: Wednesday, August 16, 2006 12:30 PM
From: Mark Borchetta <mark@borchetta.com>
To: Ed McCain <edward@mccainphoto.com>
Conversation: Danica images usage
Category: Advertising/Design

Thanks for the confirmation Ed.

--

Mark Borchetta

25020 Avenue Stanford
Suite 100
Valencia, CA
25020 Avenue Stanford, Suite 100
Valencia, CA 91355
Phone 661-977-7464
Fax 661-702-1844
www.borchetta.com

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> From: Edward McCain <edward@mccainphoto.com>
> Date: Wed, 16 Aug 2006 12:27:38 -0700
> To: Mark Borchetta <mark@borchetta.com>
> Conversation: Danica images usage
> Subject: Re: Danica images usage
>
> Mark,
>
> I granted you the right to reproduce the images on your website. Your use
> is legal and with my full permission as copyright holder of the
> Photographs.
>
> Edward
>
>
> On 8/16/06 11:56 AM, "Mark Borchetta" <mark@borchetta.com> wrote:
>
>> Hi Ed,
>>
>> I'm just emailing to confirm that we had previously spoken about The
>> Creative Department dba Borchetta Marketing Group having permission to
>> display the Danica Patrick images you shot in 2003 at Firebird Raceway for

>> use on the borchetta.com website and to be able to show to potential clients
>> as marketing materials for Borchetta Marketing Group.
>>
>> The photos were not and are not to be used for any other purpose by
>> Borchetta Marketing Group.
>>
>> There was no charge for such and Borchetta Marketing agreed not to use the
>> photos for any other purpose whatsoever.
>>
>> Please make sure I was in correct understanding of our discussion.
>>
>> Thanks.
>>
>>
>
> *****
> Edward McCain
> Assignment & Stock Photography
> Voice: (520) 623-1998 Fax: (520) 623-1190
> mailto:edward@mccainphoto.com
> Assignments:
> http://www.mccainphoto.com
> Stock:
> http://www.photosofarizona.com
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> *****
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>
>

Exhibit "I"

1 PELOSI WOLF EFFRON & SPATES LLP
JOHN PELOSI (*Admitted Pro Hac Vice*)
2 233 Broadway, 22nd Floor
New York, NY 10279
3 Telephone: (212) 334-3599
Facsimile: (212) 571-9149
4 Email: jpelosi@pwes.com
Attorneys for Defendant/Counterclaim Plaintiff
5 EDWARD MCCAIN



6 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION
7 ARGENT MORTGAGE COMPANY, Case No. SACV 06-749 CJC (RNBx)
LLC, a California limited liability
8 company; and TEAM RAHAL, INC., an
Ohio Corporation, DEFENDANT'S ANSWERS TO
9 PLAINTIFF'S SECOND SET OF
REQUESTS FOR ADMISSIONS
10 Plaintiffs,
11 v.
12 EDWARD McCain, an individual,
13 Defendant.

Judge: Hon. Cormac J. Carney
Crtrm: 9B

14 AND RELATED COUNTERCLAIMS

15 ANSWERS TO SECOND SET OF REQUESTS FOR ADMISSIONS

16 ANSWER TO REQUEST FOR ADMISSION NO. 28:

17 Admit that Argent entered into the 2002 License Agreement and that the agreement was
18 transmitted to Argent through Borchetta. The 2002 License Agreement reflects the terms
19 offered to and accepted by Argent.

20 ANSWER TO REQUEST FOR ADMISSION NO. 29:

21 Admit that Argent entered into the 2005 License Agreement and that the agreement was
22 transmitted to Argent through Borchetta. The 2005 License Agreement reflects the terms
23 offered to and accepted by Argent.

24 ANSWER TO REQUEST FOR ADMISSION NO. 30:

25 Admit, to the extent that the signature appears to be Borchetta's.

26 ANSWER TO REQUEST FOR ADMISSION NO. 31:

27 Admit, to the extent that the signature appears to be Borchetta's.
28

1 **ANSWER TO REQUEST FOR ADMISSION NO. 32:**

2 Deny.

3 **ANSWER TO REQUEST FOR ADMISSION NO. 33:**

4 Admit, to the extent that the Photographs were provided to Borchetta who, in turn, provided
5 them to Argent.

6 **ANSWER TO REQUEST FOR ADMISSION NO. 34:**

7 Admit.

8 **ANSWER TO REQUEST FOR ADMISSION NO 35:**

9 Deny. The restrictions are in the 2002 License Agreement, the terms of which were
10 accepted by Argent. Upon information and belief, Argent was made aware of the
11 restrictions in the 2002 License Agreement by Borchetta and Argent was notified by letter
12 dated August 23, 2005 of Argent's infringements.

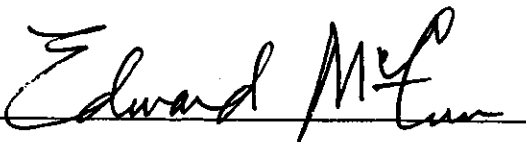
13 **ANSWER TO REQUEST FOR ADMISSION NO 36:**

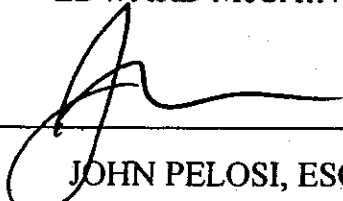
14 Deny, to the extent the admission requested is unclear.
15

16 DATED: June 29, 2007

17 **DECLARATION**

18 Edward McCain declares under penalty of perjury that he is the Defendant and Counterclaim
19 Plaintiff in this action, that he has read the foregoing Answers to Plaintiff's Second Set of
20 Admissions dated May 30, 2007, and that they are true to his own knowledge, except as to
21 matters stated upon information and belief, as to which matters he believes to be true.
22

23 
24 EDWARD MCCAIN

25
26 By: 
27 JOHN PELOSI, ESQ.
28 Attorney for Defendant/Counterclaim Plaintiff
Edward McCain

PROOF OF SERVICE

I am a citizen of the United States. My business address is 233 Broadway, 22nd Floor, New York, NY 10279. I am employed in the County of New York, where this service occurs. I am over the age of 18 years, and I am not a party to the within cause. I am readily familiar with my firm's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the day set forth below, following ordinary business practice, I served a copy of the foregoing documents described as:

DEFENDANT'S ANSWERS TO PLAINTIFF'S SECOND SET OF ADMISSIONS

By Mail: I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail, to the addressees (attorneys for Plaintiffs), on this date before 5:00 p.m.:

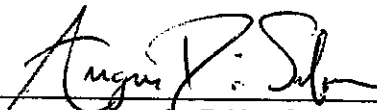
Richard P. Ormond, Esq.
BUCHALTER NEMER
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457

H. Ritchey Hollenbaugh, Esq.
Carlile, Patchen & Murphy LLP
366 East Broad Street
Columbus, OH 43215

David J. Pasternak, Esq.
Pasternak, Pasternak & Patton
1875 Century Park East, Suite 2200
Los Angeles, CA 90067-2523

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 29, 2007, at New York, New York.



Angelo DiStefano

Exhibit "J"

1 PELOSI WOLF EFFRON & SPATES LLP
2 JOHN PELOSI (*Admitted Pro Hac Vice*)
3 233 Broadway, 22nd Floor
4 New York, NY 10279
5 Telephone: (212) 334-3599
6 Facsimile: (212) 571-9149
7 Email: jpelosi@pwes.com

8 THE LAW OFFICES OF LARRY S. GREENFIELD
9 Larry S. Greenfield (SBN: 093917)
10 433 N. Camden Drive, Suite 400
11 Beverly Hills, CA 90210-4408
12 Telephone: (310) 279-5210
13 Facsimile: (310) 362-8413
14 Email: larrysgreenfield@gmail.com

15 Attorneys for Defendant
16 EDWARD MCCAIN

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

ARGENT MORTGAGE COMPANY,
LLC, a California limited liability
company; and TEAM RAHAL, INC.,
an Ohio Corporation,

Plaintiffs,

v.

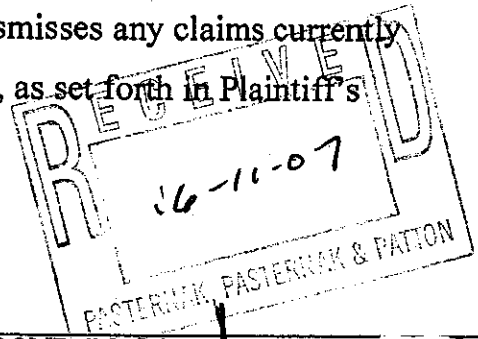
EDWARD McCain, an individual,
Defendant.

AND RELATED COUNTERCLAIMS

Case No. SACV 06-749 CJC (RNBx)
**NOTICE OF VOLUNTARY
DISMISSAL OF CLAIMS AGAINST
RAHAL LETTERMAN RACING,
LLC PURSUANT TO F.R.C.P.
RULE 41 (a)**

**Judge: Hon. Cormac J. Carney
Crtrm: 9B**

Defendant and Counterclaimant, EDWARD MCCAIN, pursuant to Federal
Rule of Civil Procedure 41(a), hereby voluntarily dismisses any claims currently
pending in this Court against Rahal Letterman, LLC, as set forth in Plaintiff's
Answer and Counterclaims.



STIPULATION TO EXTEND TIME TO RESPOND TO COMPLAINT

Exhibit

Page

167

1 Rahal Letterman Racing, LLC was not a named Plaintiff in the Complaint.
2 Edward McCain named Rahal Letterman Racing, LLC as a party in its Answer to
3 Complaint and Counterclaims. Edward McCain never served Rahal Letterman
4 Racing, LLC with its Answer to Complaint and Counterclaims. Rahal Letterman
5 Racing, LLC never answered Edward McCain's Counterclaims.

6
7 Dated: June 8, 2007

8
9 PELOSI WOLF EFFRON & SPATES LLP

10
11 By: 

12 JOHN PELOSI, ESQ.

13 Attorneys for Defendant and Counterclaimant
14 EDWARD McCain

PROOF OF SERVICE

I am a citizen of the United States. My business address is 233 Broadway, 22nd Floor, New York, NY 10279. I am employed in the County of New York, where this service occurs. I am over the age of 18 years, and I am not a party to the within cause. I am readily familiar with my firm's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the day set forth below, following ordinary business practice, I served a copy of the foregoing documents described as:

By Mail: I caused such envelopes with postage thereon fully prepaid to be placed in the mail courier service, Federal Express, to the addressee on this date:


Richard P. Ormond, Esq.
BUCHALTER NEMER
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457

H. Ritchey Hollenbaugh, Esq.
Carlile, Patchen & Murphy LLP
366 East Broad Street
Columbus, OH 43215

David J. Pasternak, Esq.
Pasternak, Pasternak & Patton
1875 Century Park East, Suite 2200
Los Angeles, CA 90067-2523

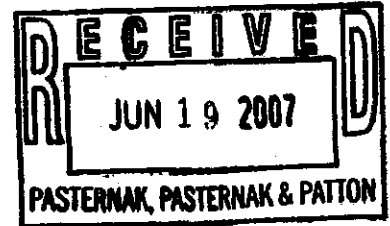
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 8, 2007, at New York, New York.



 Angelo DiStefano

Exhibit "K"



PELOSI WOLF EFFRON & SPATES LLP
JOHN PELOSI (*Admitted Pro Hac Vice*)
233 Broadway, 22nd Floor
New York, NY 10279
Telephone: (212) 334-3599
Facsimile: (212) 571-9149
Email: jpelosi@pwes.com

THE LAW OFFICES OF LARRY S. GREENFIELD
Larry S. Greenfield (SBN: 093917)
433 N. Camden Drive, Suite 400
Beverly Hills, CA 90210-4408
Telephone: (310) 279-5210
Facsimile: (310) 362-8413
Email: larrysgreenfield@gmail.com

Attorneys for Defendant
EDWARD MCCAIN

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

ARGENT MORTGAGE COMPANY,
LLC, a California limited liability
company; and TEAM RAHAL, INC.,
an Ohio Corporation,

Plaintiffs,

v.

EDWARD McCain, an individual,

Defendant.

AND RELATED COUNTERCLAIMS

Case No. SACV 06-749 CJC (RNBx)
**NOTICE OF VOLUNTARY
DISMISSAL OF CLAIMS AGAINST
RAHAL LETTERMAN RACING,
INC. PURSUANT TO F.R.C.P.
RULE 41 (a)**

**Judge: Hon. Cormac J. Carney
Crtrm: 9B**

Defendant and Counterclaimant, EDWARD MCCAIN, pursuant to Federal Rule of Civil Procedure 41(a), hereby voluntarily dismisses any claims currently pending in this Court against Rahal Letterman Racing, Inc., as set forth in Plaintiff's Answer and Counterclaims.

1 Rahal Letterman Racing, Inc. was not a named Plaintiff in the Complaint.
2 Edward McCain named Rahal Letterman Racing, Inc. as a party in its Answer to
3 Complaint and Counterclaims. Edward McCain never served Rahal Letterman
4 Racing, Inc. with its Answer to Complaint and Counterclaims. Rahal Letterman
5 Racing, Inc. never answered Edward McCain's Counterclaims.

6
7 Dated: June 14, 2007

8
9 PELOSI WOLF EFFRON & SPATES LLP

10
11 By: 

12 JOHN PELOSI, ESQ.

13 Attorneys for Defendant and Counterclaimant
14 EDWARD McCain

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PROOF OF SERVICE

I am a citizen of the United States. My business address is 233 Broadway, 22nd Floor, New York, NY 10279. I am employed in the County of New York, where this service occurs. I am over the age of 18 years, and I am not a party to the within cause. I am readily familiar with my firm's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the day set forth below, following ordinary business practice, I served a copy of the foregoing documents described as:

By Mail: I caused such envelopes with postage thereon fully prepaid to be placed in the mail courier service, Federal Express, to the addressee on this date:

Richard P. Ormond, Esq.
BUCHALTER NEMER
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457

H. Ritchey Hollenbaugh, Esq.
Carlile, Patchen & Murphy LLP
366 East Broad Street
Columbus, OH 43215

David J. Pasternak, Esq.
Pasternak, Pasternak & Patton
1875 Century Park East, Suite 2200
Los Angeles, CA 90067-2523

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 14, 2007, at New York, New York.



Angelo DiStefano

Exhibit "L"

BUCHALTER NEMER
A Professional Corporation
MICHAEL L. WACHTELL (SBN: 47218)
RICHARD P. ORMOND (SBN: 207442)
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457
Telephone: (213) 891-0700
Facsimile: (213) 896-0400
E-mail: mwachtell@buchalter.com
E-mail: rormond@buchalter.com

Attorneys for Plaintiff and Counterclaim Defendant
ARGENT MORTGAGE COMPANY, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ARGENT MORTGAGE
COMPANY, LLC, a California
limited liability company; and
TEAM RAHAL, INC., an Ohio
Corporation,

Plaintiffs,

vs.

EDWARD MCCAIN, an individual;
MARK BORCHETTA, an individual
dba BORCHETTA MARKETING
GROUP and dba BORCHETTA
GROUP; BORCHETTA,
WENTWORTH & ASSOCIATES, a
business entity of unknown origin;
BORCHETTA & WENTWORTH
ADVERTISING, a business entity of
unknown origin; BORCHETTA
ARTS & PRODUCTIONS, a
business entity of unknown origin;
and THE CREATIVE
DEPARTMENT, LLC, a California
limited liability company, dba
BORCHETTA MARKETING
GROUP,

Defendants.

Case No. SACV 06-749 CJC (RNBx)

1. **ARGENT MORTGAGE
COMPANY, LLC'S FIRST
AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL
FOR:**
2. **DECLARATORY JUDGMENT
OF NON-INFRINGEMENT;**
3. **DECLARATORY JUDGMENT
FOR NO LIABILITY FOR
ACTS OF THIRD PARTIES;**
4. **BREACH OF WRITTEN
CONTRACT;**
5. **BREACH OF FIDUCIARY
DUTY;**
6. **CONTRACTUAL INDEMNITY;**
7. **EQUITABLE INDEMNITY;**
8. **ACCOUNTING;**
9. **INTENTIONAL
MISREPRESENTATION;**
10. **INTENTIONAL
CONCEALMENT;**
11. **INTENTIONAL
CONCEALMENT OF SECRET
PROFITS; and**
12. **CONSPIRACY.**

EDWARD MCCAIN, an individual,
Counterclaim plaintiff,

vs.

TEAM RAHAL, INC., an Ohio
Corporation; RAHAL LETTERMAN
RACING, INC., a California limited
liability company; and ARGENT
MORTGAGE COMPANY, LLC, a
California limited liability company,
Counterclaim defendants.

Argent Mortgage Company, LLC ("Argent"), for itself alone, in its First Amended Complaint alleges as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory judgment of non-infringement of copyrights registered under United States Registration No. Vau-564-275 and for related State claims. This action arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 under a Federal Question and under 28 U.S.C. § 1367(a) for Argent's additional claims set forth herein as arising from the same case and controversy as the Federal Question.

3. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the infringement claims and the other acts complained of herein occurred in this judicial district. Further, the defendants entered into agreements related to the subject matter of the claims and the copyrights of Registration No. Vau-564-275 in this judicial district and all of the defendants regularly conduct business in this Federal District.

THE PARTIES

4. Argent is a California limited liability company with its principal place of business in Orange County, California.

5. Defendant **Edward McCain** ("McCain") is a citizen of the United States of America, having a place of business at 211 South 4th Avenue, Tucson, Arizona 85701.

6. Defendant **Mark Borchetta** is a citizen of the United States of America, having his principal place of business in Valencia, California

7. Mark Borchetta has registered various fictitious business names in the County of Los Angeles, including **Borchetta Group** and **Borchetta Marketing Group**.

8. Defendant **Borchetta, Wentworth & Associates** is a California business of unknown form, having a principal place of business in Valencia, California.

9. Defendant **Borchetta & Wentworth Advertising** is a California business of unknown form, having a principal place of business in Valencia, California.

10. Defendant **Borchetta Arts & Productions** is a California business of unknown form, having a principal place of business in Valencia, California.

11. Defendant **The Creative Department, LLC**, is a California limited liability company, having a principal place of business in Valencia, California. Defendant The Creative Department, LLC was also doing business as the **Borchetta Marketing Group** at all times mentioned in this Complaint.

12. For ease of reference, Defendants Borchetta Marketing Group; Borchetta, Wentworth & Associates; Borchetta & Wentworth Advertising; Borchetta Arts & Productions; and The Creative Department, LLC, are collectively

1 referred to herein as the "Borchetta Entities" and together with Mark Borchetta,
2 "Borchetta."

3 THE FICTION OF THE BORCHETTA ENTITIES

4 13. Throughout the time stated in this Complaint, Mark Borchetta held
5 himself out to Argent as the principal of the Borchetta Entities and communicated
6 to Argent as a representative of each of the Borchetta Entities, separately and
7 collectively.

8 14. There now exists, and at all times material hereto has existed, such a
9 unity of ownership, interest and control between Mark Borchetta and the Borchetta
10 Entities so that any individuality or separateness which may have existed between
11 the Borchetta Entities and Mark Borchetta has ceased or never existed.

12 15. The Borchetta Entities, individually and jointly, are the alter egos of
13 Mark Borchetta in that Mark Borchetta has completely controlled, dominated,
14 managed, and operated the Borchetta Entities, and has used those entities as mere
15 shells or conduits through which to carry on his own business, including engaging
16 in the acts and/or omissions complained of herein.

17 16. Adherence to the fiction of the separate existence of the Borchetta
18 Entities and Mark Borchetta would permit an abuse of corporate privilege and
19 would sanction fraud and promote injustice. Consequently, the Borchetta Entities
20 and Mark Borchetta should be held jointly and severally liable to Argent for the
21 acts and omissions complained of herein.

22 FACTS RELATING TO ARGENT'S DECLARATORY RELIEF CLAIMS 23 FOR NON-INFRINGEMENT

24 17. Argent, at all relevant times in this Complaint, was one of the fastest-
25 growing, wholesale mortgage companies in the United States.
26
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1 18. Plaintiff Team Rahal, Inc. ("Team Rahal") is a corporation established
2 by three-time CART champion Bobby Rahal to manage and operate an Indy Racing
3 Team.

4 19. Argent entered into a sponsorship agreement with Plaintiff Team
5 Rahal, which agreement provided that Argent would sponsor certain drivers of
6 Plaintiff Team Rahal's Indy Racing Team.

7 20. McCain is a photographer who, on or about November 13 and 14,
8 2002, took still photographs of one of Plaintiff Team Rahal's drivers, Danica
9 Patrick (the "Photographs").

10 21. McCain registered the copyrights in the Photographs with the United
11 States Copyright Office under a single registration, which issued under registration
12 number Vau-564-275 (hereinafter the "Registered Copyright").

13 22. McCain has informed Argent that Argent's use of certain Photographs
14 purportedly infringe McCain's Registered Copyright.

15 23. McCain has informed Argent that Argent is liable for alleged
16 infringement of McCain's Registered Copyright as a result of alleged uses of
17 certain Photographs by unrelated third parties.

18 24. Argent denies that it has infringed, or is infringing, McCain's
19 Registered Copyright.

20 25. Argent denies that it is liable for any alleged infringement of McCain's
21 Registered Copyright resulting from uses of certain Photographs by these unrelated
22 third parties.

23 26. In the Spring and Summer of 2006, McCain threatened to commence
24 legal action against Argent. Nevertheless, Argent attempted to resolve the dispute
25 with McCain amicably. However, no mutually acceptable resolution was reached
26 between the parties. As a result of the threats of impending litigation, Argent was
27 faced with the constant uncertainty of costly litigation. There is, therefore, an
28

1 actual case and controversy between the parties and, as such, this action was
2 commenced on August 15, 2006.

3 27. On or about December 7, 2006, McCain filed a counter-claim
4 ("Counterclaim") against Argent and others asserting a claim of copyright
5 infringement against Argent and other counter-defendants for Argent's alleged
6 copyright infringement of the Photographs.

7 28. Additionally, notwithstanding the pendency of this action, on June 15,
8 2007, McCain filed an action entitled *George Edward McCain v. Rahal Letterman*
9 *Racing, LLC, et al.*, in the United States District Court for the Southern District of
10 New York, case number 07-CV-5729 (the "New York Action"). The complaint in
11 the New York Action is, amongst others, against Team Rahal's sister company,
12 Rahal Letterman Racing, Inc., for copyright infringement of the same Photographs.
13 A true and correct copy of the New York Action complaint is attached hereto as
14 **Exhibit A.**

15 **FACTS RELATING TO ARGENT'S CLAIMS AGAINST BORCHETTA**
16 **FOR BREACH OF FIDUCIARY DUTY AND BORCHETTA'S**
17 **CONSPIRACY WITH MCCAIN TO DEFRAUD ARGENT**

18 29. On or about May 14, 2002, Borchetta & Wentworth Advertising,
19 through its president, Mark Borchetta, and Argent entered into an Agency Service
20 Agreement (the "Agency Agreement"), a true and correct copy of which is attached
21 hereto as **Exhibit B.** At different times of the relationship between Mark Borchetta
22 and Argent, Mark Borchetta, at one time or another, performed his agency duties
23 under the "color" of each of the Borchetta Entities.

24 30. Pursuant to the California Agency Act (California Civil Code Section
25 2295, *et seq.*), Borchetta, as an agent of Argent, owes Argent the utmost level of
26 good faith and fidelity and Borchetta's fiduciary duties, as a matter of law, include
27 without limitation: not acting on behalf of any person or entities whose interests
28

1 were adverse to Argent's interests; making full disclosures of all material facts that
 2 may impact Argent's interests or its decision-making abilities; not disclosing
 3 confidential information to third parties; and not receiving a kickback for services
 4 that Borchetta provided or arranged for Argent.

5 31. Pursuant to the Agency Agreement, Argent instructed Borchetta to
 6 acquire photographs of Danica Patrick for Argent's exclusive and perpetual use in
 7 its advertising and marketing campaigns. Borchetta was specifically instructed to
 8 obtain full and unlimited rights to such photographs (including copyrights).

9 32. On or about November 13, 2002 Borchetta hired and contracted with
 10 defendant McCain to take the requested photographs (the "First Photography
 11 Agreement"). Attached hereto as **Exhibit C** is a true and correct copy of the First
 12 Photography Agreement.

13 33. Contrary to Argent's express instructions to its purported agent,
 14 Borchetta, the First Photography Agreement did not acquire unlimited rights for
 15 Argent of the Photographs.

16 34. Argent is informed and believes that Borchetta affirmatively
 17 misrepresented to Argent that Argent did, in fact, possess full rights and ownership
 18 of the Photographs pursuant to the First Photography Agreement. Moreover,
 19 despite his duty to do so, Borchetta failed to disclose to Argent any limitations or
 20 restrictions with regard to Argent's use of the Photographs. Finally, Borchetta did
 21 not initially deliver the Photographs to Argent and instead, in a breach of the First
 22 Photography Agreement, delivered them first to Team Rahal—also failing to advise
 23 Team Rahal of the restrictions enumerated in the First Photography Agreement.

24 35. On August 11, 2004, while still acting, under contract, as Argent's
 25 agent and without Argent's knowledge or consent, Borchetta began representing
 26 one of Argent's competitors in connection with the sponsorship of an Indy Racing
 27 event going so far as soliciting potential clients by stating, "I brought Argent
 28 Mortgage into racing with Rahal Letterman – *but there is no specific allegiance or*

1 *conflict there...*" (Emphasis added.) See Borchetta's August 11, 2004 letter,
2 provided to counsel for Argent by Mark Borchetta, attached hereto as **Exhibit D**.

3 36. On or about November 24, 2004, Argent and Borchetta cancelled the
4 Agency Agreement and after that, Argent retained Borchetta's services as their
5 agent on a project by project basis.

6 37. On or about January 21, 2005, Argent rehired Borchetta as its agent to
7 acquire a Photography agreement from McCain for use of certain Photographs in
8 various third party publications. Attached hereto as **Exhibit E** is a true and correct
9 copy of the Second Photography Agreement.

10 38. Pursuant to the Second Photography Agreement, Borchetta was again
11 authorized and engaged to act as Argent's agent to acquire these photographs at the
12 best possible price. In an email dated February 7, 2005, Borchetta advised Argent
13 that he obtained the photographs at the "discounted rate of \$6,500." (See Borchetta
14 email attached hereto as **Exhibit F**.) However, Borchetta misrepresented this fact
15 to Argent and omitted to fully disclose the nature of his relationship to McCain.

16 39. On or about January 20, 2005, McCain advised Borchetta that the cost
17 of the Second Photography Agreement would be \$5,970. Borchetta, however,
18 emailed McCain and advised him that Argent "ha[s] the money and they are very
19 difficult to deal with..." and that McCain should invoice Argent the higher price of
20 \$6,500. (See Borchetta email attached hereto as **Exhibit G**).

21 40. Finally, Borchetta and McCain agreed that McCain would invoice
22 Argent \$6,500 and pay Borchetta the difference between the \$6,500 and the \$5,970
23 without Argent's knowledge or consent (see email exchange between Borchetta and
24 McCain **Exhibit H**).

25 41. Later, after McCain began questioning the allegedly unauthorized use
26 of the Photographs by parties unrelated to Argent, Borchetta forwarded certain
27 confidential communications between himself and Argent (that took place when he
28 was Argent's agent) to McCain without Argent's knowledge or consent. Argent is

1 informed and believes that some time prior to June 2, 2005 Borchetta and McCain
 2 entered into an unlawful conspiracy to extort Argent in connection with the alleged
 3 infringement of the Photographs. Specifically, it appears that McCain and
 4 Borchetta agreed that Borchetta would be paid ten percent of any monies paid by
 5 Argent to McCain through their "shakedown" of Argent. Borchetta, despite having
 6 continuing duties to Argent and despite having an apparent and unquestionable
 7 conflict of interest, assisted McCain in his extortion attempts to shakedown Argent.
 8 Attached hereto as **Exhibit I** is a copy of an e-mail from McCain to Borchetta
 9 discussing this conspiracy and payment arrangement.

10 42. Finally, in later communications with Argent regarding the use of the
 11 Photographs, Borchetta routinely blind copied McCain on emails that Argent
 12 believed were confidential communications between itself and its agent. Argent is
 13 informed and believes that the purpose of these blind communications was an
 14 attempt by Borchetta and McCain to further entrap Argent and extort monies from
 15 Argent for the alleged infringement of the Photographs.

16 **FIRST CLAIM FOR RELIEF**

17 **Declaratory Judgment of Non-Infringement of Copyright**

18 (Against McCain)

19 43. Argent realleges and incorporates herein, by reference, each of the
 20 allegations in paragraphs 1-12 and 17-28 of this Complaint as if set forth in full.

21 44. Argent's uses of the Photographs do not infringe McCain's Registered
 22 Copyright. Therefore, Argent is entitled to a declaratory judgment of Argent's
 23 rights, specifically, that Argent has not infringed McCain's Registered Copyright.
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SECOND CLAIM FOR RELIEF

Declaratory Judgment of No Liability for Alleged Infringement by Third Parties
(Against McCain)

45. Argent realleges and incorporates herein, by reference, each of the allegations in paragraphs 1-12, 17-28 and 44 of this Complaint as if set forth in full.

46. Argent did not authorize any third parties to use the Photographs and is not responsible for any such use of the Photographs.

47. Argent is not liable for any alleged infringement of McCain's Registered Copyright by third parties. Therefore, Argent is entitled to a declaratory judgment against McCain that Argent is not liable for any alleged infringement of McCain's Registered Copyright by third parties.

THIRD CLAIM FOR RELIEF

Breach of Written Contract

(Against Borchetta)

48. Argent realleges and incorporates herein, by reference, each of the allegations in paragraphs 1-42 of this Complaint as if set forth in full.

49. On or about May 14, 2002, Borchetta and Argent entered into the written Agency Agreement. Although the Agency Agreement was entered into between Argent and Borchetta & Wentworth Advertising, Borchetta & Wentworth Advertising is a form of business entity which is unknown and, on information and belief, is an alter ego of Mark Borchetta and/or the Borchetta Entities. The uncertainty as to which Borchetta Entity entered into the Agency Agreement with Argent is illustrated by the fact that the Agency Agreement is written on The Creative Department letterhead although it was executed by Mark Borchetta allegedly on behalf of Borchetta & Wentworth Advertising.

50. Pursuant to paragraph II.B. of the Agency Agreement, Borchetta agreed to, among other things, devote his (or their) best efforts to advance Argent's

interests, including: (a) Obtaining full rights to and ownership of the Photographs in favor of Argent; (b) Fully disclosing the terms of all contracts, including those with McCain, which were negotiated and contracted for within the scope of the agency relationship with Argent; and (c) Not divulging any proprietary information, including reports, marketing information or materials, supplied by Argent without Argent's prior permission.

51. Borchetta breached the Agency Agreement by, among other things: (a) failing to obtain full rights to and ownership of the Photographs as instructed by Argent and thereby failing to act in Argent's best interests; (b) failing to fully disclose to Argent the limitations of use to the Photographs under the First Photography Agreement; (c) wrongfully divulging Argent's proprietary and confidential information to third parties without Argent's consent; and (d) failed to disclose to Argent the terms of Borchetta's kickback agreement with McCain.

52. Argent performed all conditions, covenants, and promises required to be performed by Argent in accordance with the terms of the Agency Agreement, except for those waived or excused by Borchetta.

53. As a direct and proximate result of Borchetta's breach of the Agency Agreement, Argent has suffered injury in an amount to be proven at trial, but reasonably believed to be in excess of the jurisdictional limitation of this Court, including recovery of attorneys' fees and costs.

FOURTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

(Against Borchetta)

54. Argent realleges and incorporates herein by reference, each of the allegations in paragraphs 1-42 and 49-53 of this Complaint as if set forth in full.

1 55. On or about May 14, 2002, Borchetta and Argent entered into the
2 Agency Agreement. As specifically enumerated in paragraph 30, above, Borchetta
3 owed to Argent the utmost level of good faith and fidelity.

4 56. On information and belief, Argent alleges that Borchetta breached his
5 (or their) fiduciary duties to Argent and failed to act as a reasonably careful agent
6 would have acted under the same or similar circumstances. Borchetta acted
7 adversely to Argent's interests and without Argent's knowledge or consent by,
8 among other things: (a) failing to obtain the full rights to the Photographs for
9 Argent and failing to fully disclose the limitations in the Photography Agreements
10 to Argent; (b) revealing, in and around January 2005, Argent's confidential
11 marketing strategy and budget to McCain; (c) blind copying McCain on e-mails
12 from Borchetta to Argent without informing Argent at anytime that their private
13 and confidential communications were being disclosed to outside parties while
14 Borchetta and Argent were communicating; (d) forwarding private and confidential
15 communications between Borchetta and Argent to McCain without obtaining
16 Argent's consent for such disclosure or informing Argent of the disclosure at any
17 time; (e) entering into an agreement with McCain whereby McCain would
18 overcharge Argent for the Second Photography Agreement and then kickback a
19 portion of Argent's payment to Borchetta; and (f) agreeing to accept money from
20 McCain in exchange for Borchetta's assistance in McCain's claim of copyright
21 infringement against Argent.

22 57. Borchetta used his (or their) knowledge of confidential information
23 acquired during the agency relationship with Argent and shared the confidential
24 information with McCain to bolster McCain's adverse position to Argent and to
25 personally profit from such unauthorized disclosure.

26 58. As a direct and proximate result of Borchetta's breach of fiduciary
27 duties to Argent, Argent has suffered injury in an amount to be proven at trial, but
28

1 reasonably believed to be in excess of the jurisdictional limitation of this Court,
2 including recovery of attorneys' fees and costs.

3 59. The aforementioned acts of Borchetta were willful, malicious and
4 oppressive and justify an award of punitive damages in an amount sufficient to
5 punish Borchetta and to deter future conduct of this type.

6 **FIFTH CLAIM FOR RELIEF**

7 **Contractual Indemnity**

8 **(Against Borchetta)**

9 60. Argent realleges and incorporates herein by reference, each of the
10 allegations in paragraphs 1-59 of this Complaint as if set forth in full.

11 61. Paragraph VIII of the Agency Agreement provides that Borchetta is
12 required to indemnify Argent from any liability, loss, cost, expense or obligation
13 (including attorneys' fees and costs) on account of or arising from the Agency
14 Agreement.

15 62. Defendant McCain has asserted that Argent is liable for alleged
16 copyright infringement of the Photographs.

17 63. As between Argent and Borchetta, responsibility for the alleged
18 copyright infringement of the Photographs rests entirely, or at least partially, on
19 Borchetta.

20 64. If Argent is found liable for copyright infringement, any damages for
21 which Argent may be held liable to McCain will be the result of Borchetta's
22 breaches of contract, breaches of fiduciary duties owed to Argent, and fraudulent
23 conduct and, as such, Argent is entitled to be fully, or at least partially, indemnified
24 for all damages for which Argent is found liable to McCain, as well as for Argent's
25 attorneys' fees and costs.

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SIXTH CLAIM FOR RELIEF

Equitable Indemnity

(Against Borchetta)

65. Argent realleges and incorporates herein by reference, each of the allegations in paragraphs 1-64 of this Complaint as if set forth in full.

66. McCain has asserted that Argent is liable for alleged copyright infringement of the Photographs.

67. As between Argent and Borchetta, responsibility for the alleged copyright infringement of the Photographs rests entirely, or at least partially, with Borchetta.

68. If Argent is found liable for copyright infringement, any damages for which Argent may be held liable to McCain will be the direct result of Borchetta's breaches of contract, breaches of fiduciary duties owed to Argent, and fraudulent conduct and, as such, Argent is entitled to be fully, or at least partially, equitably indemnified from Borchetta for all damages for which Argent is found liable to McCain, as well as for attorneys' fees and costs.

SEVENTH CLAIM FOR RELIEF

Accounting

(Against Borchetta)

69. Argent realleges and incorporates herein by reference, each of the allegations in paragraphs 1-68 of this Complaint as if set forth in full.

70. As an agent owing fiduciary duties to Argent, Borchetta is required to account for all benefits and advantages Borchetta received which arose from or were related to the agency relationship.

71. Argent is informed and believes that, while Borchetta was supposedly acting in the covenant between Argent and Borchetta, Borchetta obtained monies or other benefits from persons or entities other than Argent for performing duties

1 contrary to the interests of Argent, in breach of Borchetta's fiduciary duties to
2 Argent.

3 72. Argent is entitled to an accounting to determine what monies or other
4 benefits Borchetta received from any person or entity which arose from the agency
5 relationship between Argent and Borchetta.

6 **EIGHTH CLAIM FOR RELIEF**

7 **Fraud – Intentional Misrepresentation**

8 (Against Borchetta)

9 73. Argent realleges and incorporates herein by reference, each of the
10 allegations in paragraphs 1-72 of this Complaint as if set forth in full.

11 74. On information and belief, before entering into the First Photography
12 Agreement, Borchetta represented to Argent that Argent would have unlimited
13 rights to the Photographs. These representations by Borchetta to Argent were false
14 and were known by Borchetta to be false at the time Borchetta made these
15 representations to Argent.

16 75. Borchetta made these representations with the intent to deceive Argent
17 and Borchetta recklessly made the representations without regard for the truth.

18 76. Borchetta intended that Argent would justifiably rely on these
19 representations.

20 77. At the time the representations were made, Argent did not know that
21 the misrepresentations were false and therefore relied on Borchetta's
22 representations that Argent owned full rights to the Photographs Borchetta was
23 charged with obtaining these rights.

24 78. Argent was justified in its reliance on Borchetta's misrepresentations
25 as Borchetta was acting as Argent's agent and Argent trusted Borchetta in that
26 capacity.
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79. As a direct and proximate result of Borchetta's intentional misrepresentations, Argent has suffered injury in an amount to be proven at trial, but reasonably believed to be in excess of the jurisdictional limitation of this Court, including recovery of attorneys' fees and costs.

80. The aforementioned acts of Borchetta were willful, malicious and oppressive and justify an award of punitive damages in an amount sufficient to punish said defendants and to deter future conduct of this type.

NINTH CLAIM FOR RELIEF

Fraud - Intentional Concealment

(Against Borchetta)

81. Argent realleges and incorporates herein by reference, each of the allegations in paragraphs 1-80 of this Complaint as if set forth in full.

82. On information and belief, before entering into the First Photography Agreement, Argent told Borchetta that Argent intended to and desired to have unlimited rights to the Photographs.

83. Thereafter, Borchetta intentionally failed to disclose and/or actively concealed from Argent the material terms and limitations of the First Photography Agreement with respect to Argent's use of the Photographs or the terms of Borchetta's relationship with McCain. Borchetta knew or reasonably should have known that Argent would justifiably rely on Borchetta fully disclosing all material facts to Argent concerning its rights under the Photography Agreements.

84. Borchetta never advised Argent that he (or they) had agreed to limit Argent's rights to the Photographs and thus, Argent reasonably believed that it owned full rights to the Photographs.

85. Argent was justified in its reliance on Borchetta with respect to Argent's use of the Photographs as Borchetta was acting as Argent's agent.

86. As a direct and proximate result of Borchetta's fraudulent concealment, Argent has suffered injury in an amount to be proven at trial, but reasonably believed to be in excess of the jurisdictional limitation of this Court, including recovery of attorneys' fees and costs.

87. The aforementioned acts of Borchetta were willful, malicious and oppressive and justify an award of punitive damages in an amount sufficient to punish said defendants and to deter future conduct of this type.

TENTH CLAIM FOR RELIEF

Fraud – Intentional Concealment of Secret Profits

(Against Borchetta and McCain)

88. Argent realleges and incorporates herein by reference, each of the allegations in paragraphs 1-87 of this Complaint as if set forth in full.

89. On or about January 21, 2005, Borchetta and McCain knowingly and willfully agreed among themselves that, pursuant to the Second Photography Agreement, McCain would directly invoice Argent for his photography services but would charge Argent more than his regular fee and would then kickback to Borchetta the difference between McCain's fees and what Argent paid to McCain.

90. McCain and Borchetta intentionally and purposely failed to disclose and/or actively concealed from Argent this secret kickback arrangement in order for Borchetta to be paid this extra money.

91. Borchetta and McCain knew or reasonably should have known that Argent would justifiably rely on Borchetta fully disclosing all material facts to it concerning Argent's payments to McCain for the Photographs it obtained under the Second Photography Agreement.

92. Argent was justified in its reliance on Borchetta and McCain's silence with respect to the unlawful payment to Borchetta through Borchetta's and McCain's fraudulent concealment.

93. As a direct and proximate result of the defendants' fraudulent concealment, Argent has suffered injury in an amount to be proven at trial, but reasonably believed to be in excess of the jurisdictional limitation of this Court, including recovery of attorneys' fees and costs.

94. The aforementioned acts of the defendants, and each of them, were willful, malicious and oppressive and justify an award of punitive damages in an amount sufficient to punish said defendants and to deter future conduct of this type.

ELEVENTH CLAIM FOR RELIEF

Conspiracy

(Against Borchetta and McCain)

95. Argent realleges and incorporates herein by reference, each of the allegations in paragraphs 1-94 of this Complaint as if set forth in full.

96. On or about January 21, 2005, Borchetta and McCain knowingly and willfully conspired and agreed among themselves that, pursuant to the Second Photography Agreement, McCain would directly invoice Argent for his photography services but would charge Argent more than his regular fee and would then kickback to Borchetta the difference between McCain's fees and what Argent paid to McCain.

97. McCain and Borchetta intentionally failed to disclose or actively concealed from Argent this secret arrangement from Argent in order for Borchetta to be paid twice from Argent: one payment directly from Argent for Borchetta's services as Argent's agent and fiduciary; and then another payment as a kickback from McCain once Argent directly paid McCain for his photography services.

98. Borchetta and McCain knew or reasonably should have known that Argent would justifiably rely on Borchetta fully disclosing all material facts to it concerning Argent's payments to McCain for the Photographs it obtained under the Second Photography Agreement. Additionally, McCain and Borchetta conspired to

1 extort money from Argent by attempting to get Argent to pay money for the alleged
 2 infringement of the Photographs despite the fact that such Photographs were in the
 3 control of Borchetta. In exchange for his cooperation, McCain promised to pay
 4 Borchetta ten percent of any monies extorted from Argent (see **Exhibit I**).

5 99. Argent was justified in its reliance on Borchetta's and McCain's
 6 silence with respect to Argent's double payment to Borchetta through Borchetta's
 7 and McCain's fraudulent concealment.

8 100. As a direct and proximate result of the defendants' conspiracy to
 9 fraudulently conceal their arrangement for secret profits, Argent has suffered injury
 10 in an amount to be proven at trial, but reasonably believed to be in excess of the
 11 jurisdictional limitation of this Court, including recovery of attorneys' fees and
 12 costs.

13 101. The aforementioned acts of the defendants, and each of them, were
 14 willful, malicious and oppressive and justify an award of punitive damages in an
 15 amount sufficient to punish said defendants and to deter future conduct of this type.

16 **PRAYER FOR RELIEF**

17 WHEREFORE Argent prays for judgment as follows:

18 **On The First Claim For Relief**

19 (Declaratory Judgment of Non-Infringement)

20 1. A declaration that Argent's use of the Photographs, which McCain
 21 contends is an infringement of McCain's copyrights, do not constitute infringement
 22 of McCain's Registered Copyright pursuant to 17 U.S.C. § 501 or a violation of any
 23 other rights held by McCain;

On The Second Claim For Relief

(Declaratory Judgment of No Liability for Alleged Infringement by Third Parties)

2. A declaration that Argent is not liable for any uses of Photographs by third parties, which McCain alleges are an infringement of McCain's Registered Copyright;

On The Third Claim For Relief

(Breach of Written Contract)

3. For damages in an amount to be determined at trial;
4. For interest at the legal rate;
5. For reasonable attorneys' fees;

On The Fourth Claim For Relief

(Breach of Fiduciary Duty)

6. For damages in an amount to be determined at trial;
7. For recovery of any secret profits wrongfully obtained during the agency relationship between the Borchetta Defendants and Argent;
8. For interest at the legal rate;
9. For punitive damages;
10. For reasonable attorneys' fees;

On The Fifth Claim For Relief

(Contractual Indemnity)

11. If Argent is found liable for damages arising from McCain's claim of copyright infringement, for Argent to be fully or partially indemnified for all damages based on the indemnification provision in the Agency Agreement;
12. For reasonable attorneys' fees;

On The Sixth Claim For Relief

(Equitable Indemnity)

13. If Argent is found liable for damages arising from McCain's claim of copyright infringement, for Argent to be fully or partially indemnified for all damages based on equitable principles;

14. For reasonable attorneys' fees;

On The Seventh Claim For Relief

(Accounting)

15. For an accounting of all monies due and owing from defendants to Argent;

16. For an order granting possession of the above-described monies to Argent;

On The Eighth Claim For Relief

(Fraud – Intentional Misrepresentation)

17. For damages in an amount to be determined at trial;

18. For interest at the legal rate;

19. For punitive damages;

20. For reasonable attorneys' fees;

On The Ninth Claim For Relief

(Fraud – Intentional Concealment)

21. For damages in an amount to be determined at trial;

22. For interest at the legal rate;

23. For punitive damages;

24. For reasonable attorneys' fees;

On The Tenth Claim For Relief

(Fraud – Intentional Concealment of Secret Profits)

25. For damages in an amount to be determined at trial;

26. For interest at the legal rate;

- 1 27. For punitive damages;
2 28. For reasonable attorneys' fees;

3 On The Eleventh Claim For Relief

4 (Fraud – Conspiracy)

- 5 29. For damages in an amount to be determined at trial;
6 30. For interest at the legal rate;
7 31. For punitive damages;
8 32. For reasonable attorneys' fees;

9 On All Claims For Relief

- 10 33. For interest at the legal rate on all sums recovered;
11 34. For attorneys fees, where allowed;
12 35. For costs of suit; and
13 36. For such other and further relief as the Court may deem proper.

14 DATED: July ____, 2007

15 BUCHALTER NEMER
16 A Professional Corporation

17 By: _____
18 RICHARD P. ORMOND
19 Attorneys for Plaintiff and Counterclaim
20 Defendant Argent Mortgage Company, LLC
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DEMAND FOR JURY TRIAL

Pursuant to F.R.C.P. 38(b), Argent hereby demands a trial by jury in this action of any issues triable by jury.

DATED: July ____, 2007

BUCHALTER NEMER
A Professional Corporation

By: _____
RICHARD P. ORMOND
Attorneys for Plaintiff and Counterclaim
Defendant Argent Mortgage Company, LLC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1875 Century Park East, Suite 2200, Los Angeles, California 90067-2523.

On **July 27, 2007**, I served the foregoing document described as **AFFIRMATION OF JOHN W. PATTON, JR.** on all interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED LIST

- ☐ **BY MAIL:** I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.
- ☐ **BY FACSIMILE:** At or before 5:00 p.m., I caused said document(s) to be transmitted by facsimile. The telephone number of the sending facsimile machine was (310) 553-1540. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.
- ☒ **BY FEDEX:** I deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx to receive documents, in an envelope or package designated by FedEx with delivery fees paid or provided for, addressed to the person(s) being served.
- ☐ **BY PERSONAL SERVICE:** I delivered such envelope(s) by hand to the office of the person(s) being served.
- ☐ **BY PERSONAL SERVICE:** I personally delivered such envelope(s) directly to the person(s) being served.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 27, 2007, at Los Angeles, California.


L. K. Snyder

George Edward McCain v. Rahal Letterman Racing, LLC, etc., et al.
United States District Court Southern District of New York
Case No. 07-CV-5729 (JSR)

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